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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,470	09/12/2003	Tor Rafael Lund	134/125	4956

7590

02/23/2005

Averill & Varn
8244 Painter Ave.
Whittier, CA 90602

EXAMINER

WILLATT, STEPHANIE L

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/660,470

Applicant(s)

LUND ET AL.

Examiner

Stephanie L. Willatt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 13 and 14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-11, 13 and 14 is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-4, and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by Rende.

Rende discloses a nail clipping assembly including a pair of clippers for clipping a fingernail or toenail. The nail clippers have an upper arm and a lower arm (elongate member 12,14). Each arm has a blade end (16,18) and a joined end and the upper and lower arms (elongate member 12,14) are joined at their joined ends. The upper arm (elongate member 12) has an upper blade at its blade end (16) and the lower arm (elongate member 1) has a lower blade at its blade end (18). The upper and lower blades (16,18) are aligned to meet to form a cutting line. An operating lever (26) is held to the pair of nail clippers so that the depression of the operating lever causes the upper

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blade (16) to move downwardly and meet the lower blade (18) to create a cutting action.

A light source (46) is held near the upper and lower blades (16,18) and is positioned below said lower blade (Figure 4), said light source emitting a beam of light so that when a finger is moved so that an extending nail portion at a distal end of the finger moves between the upper blade (16) and the lower blade 18), the light source (46) will illuminate at least that portion of the interior of the finger under its nail so that an intersection between the extending portion of the nail and the finger is clearly visible. The beam of light emitted from the light source (46) illuminates the "region beyond said first end of said elongate members [12,14]", as stated in lines 37-42 of column 6, from below. Therefore, the light source (46) illuminates the intersection between the nail and the finger. A means for energizing the light source (46) includes a battery (48) and a switch, as described in column 5, lines 4-8.

A holder (housing 29, misprinted in specification as 26) has a recess along the top for holding the pair of nail clippers so that the upper (16) and lower blades (18) thereof may be moved adjacent the end of a subject's finger end and over a subject's extending nail. The holder (housing 29) has a hand graspable handle and a cutting end. The holder (housing 29) further supports the light source at its cutting end, as shown in Figure 4. The holder (housing 29) has a receptacle (small housing 50) for holding the means for energizing the light source (battery 48 and switch). The light source (46) is a pen light, as discussed in column 5, lines 4-8. It is well known that pen lights have incandescent bulbs. The finger tip portion of the subject's finger could

moved to any distance from the tip of the light bulb, even when the light source is located in the receptacle, since it is not fixed to the apparatus.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rende.

Rende discloses the features discussed above, but does not disclose the distance between the bulb and the finger tip of a user when the subject's finger is located so that the fingernail is between the upper and lower blades. However, claim 6 of Rende states that the light is mounted for "illuminating a region beyond said first end of said elongate members." It would have been obvious to one having ordinary skill in the art at the time the invention was made to position the bulb within the holder so that its tip is within at least about one-eighth of an inch from a finger tip portion of the subject's finger when the subject's finger is located so that the fingernail is between the upper and lower blades, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233 (CCPA 1955).

Allowable Subject Matter

5. Claims 8-11, 13, and 14 are allowed.

Response to Arguments

6. Applicant's arguments filed 15 November 2004 have been fully considered but they are not persuasive. Applicant argues that Rende does not suggest that the light is to be used to illuminate a finger during a cutting operation, and applicant further argues that the thickness of the lower blade, the housing, and the spacing of the light below the top of its housing (50) cause the beam emitted from the pen light to not be close enough or directed high enough to illuminate the user's finger. However, claim 6 of Rende states that the light illuminates a region beyond the first end of the elongate members (12, 14), which is where the fingertip is positioned when a fingernail is being cut. The housing (26) does not create a barrier for the beam of light because the housing is made of clear plastic, as discussed in column 5, lines 21-23.

Applicant argues that the pen light is not located inside the receptacle of the housing. However, for the purposes of examination, the receptacle of the housing in Rende is being considered the small housing (50) attached to the housing (26). Therefore, the pen light is located within the receptacle (housing 50) of the housing (26).

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephanie L. Willatt whose telephone number is (571) 272-4721. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


slw


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